

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5989 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KHODABHAI DAHYABHAI MAKWANA

Appearance:

MR SM MAZGAONKAR for Petitioner

MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/09/96

ORAL JUDGEMENT

1. The Corporation has challenged the award made by the Labour Court at Ahmedabad in Ref. (LCA) No.135 of 1983 dated 30th June, 1984. By this award the reference was partly allowed. The order of dismissal of the respondent workman dated 11-5-1981 was set aside. The Corporation was directed to reinstate the workman, the respondent no.1 herein on his original post with continuity of service, but without payment of full

backwages.

2. The respondent workman is a conductor of the Corporation. He was given chargesheet on 4-7-1980 and after holding fullfledged inquiry the workman was ordered to be dismissed from the services under the order dated 11-5-1981. The workman respondent raised an industrial dispute and the reference has been made to the Labour Court.

3. The learned counsel for the petitioner contended that the respondent workman was found to be guilty of serious misconduct. It is a case of misappropriation of the money of the Corporation. The dismissal has been made after holding the inquiry and inquiry was not found to be illegal or erroneous in any manner. The only contention made by the workman before the Labour court was that the order of termination amounts to one of the punishment shockingly disproportionate to the misconduct alleged and the Labour court instead of giving any other punishment has given the workman clean chit.

4. On the other hand, the learned counsel for the respondent Shri H.K. Rathod contended that the workman has been ordered to be taken by the Corporation on the post of Artisan Gr. C and not on the post of conductor after award of the Labour Court. As the workman has not been taken on the post of conductor and he has been taken on the post of Artisan Gr. C, the interest of justice will be met that no interference is made by this court. It has next been contended that the punishment of withholding of three grade increments with cumulative effect in the circumstances will meet the end of justice.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. It is a case where serious misconduct was committed by the workman-conductor. He was in fact found to be responsible for the misappropriation of the money of the Corporation. In the case of the conductor, who has misused his office and put the Corporation to loss by misappropriating the amount, certainly is a serious matter and it should be dealt with severely. The punishment of dismissal could not have been interfered normally. It cannot be said to be shocking to the judicial conscience. In the case of dismissal, termination or removal from the services, naturally the employment has to come to an end and may be a case of economical death, but then in every case no interference can be made where one of the aforesaid punishment is given. The interference with the punishment given by the

disciplinary authority on a proved misconduct can only be interfered with by the Court or the Tribunal where it is shocking to the judicial conscience, which I do not find to be a case here. The reasons which have been given by the Labour court to interfere with the punishment given to the respondent workman are extraneous and irrelevant. The Labour court has accepted the fact that the concerned workman as and when found that the amount was misappropriated by him, he had deposited the same immediately. This action of the respondent was considered to be of the nature which warrants a merciful approach in the matter. Once misappropriation has been admitted and merely because the amount has been deposited, how it can be said to be a matter where a lenient view should be taken. It is absolutely perverse approach that because of depositing of the amount misappropriated by the workman concerned, it has not resulted into either unlawful gain or unlawful loss to the workman or to the Corporation. The finding of the Labour court that the allegation of misappropriation is not proved, is perverse. The charge has been proved and the inquiry has not been challenged by the workman. Though I am of the opinion that the Labour court has committed serious error in interfering with the penalty of dismissal, but looking to the fact that the workman has been reinstated on the post of Artisan Gr.C and that the counsel for the petitioner has accepted that the workman will give his claim on the post of conductor coupled with the fact that the counsel for the respondent is also agreeable that the punishment of withholding of three grade increments with cumulative effect may be substituted for the given punishment and that there is nothing adverse found against the workman for his working for last 12 years, the interest of justice will be met that the punishment of dismissal is substituted by the punishment of withholding of three grade increments with cumulative effect.

6. In the result, this Special Civil Application succeeds in part and the award of the Labour Court is modified and it is hereby ordered that the penalty of dismissal which has been given to the respondent by the disciplinary authority of the Corporation is substituted by the penalty of withholding of three grade increments with cumulative effect. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-